

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)	
)	
Plaintiffs,)	
v.)	No. 1:23-cv-00108-LMB-JFA
)	
GOOGLE LLC,)	
)	
Defendant.)	

RESPONSE TO DEFENDANT’S MOTION TO SEAL [ECF NO. 308]

Defendant, Google LLC (“Google”), has moved pursuant to Local Civil Rule 5 to seal four deposition transcripts¹ attached as exhibits to Google’s Motion for *In Camera* Review, Dkt. Nos. 301, 303, on the grounds that the transcripts “contain information designated by Plaintiff the United States as privileged, confidential, or highly confidential under the parties’ protective order (Dkt. 203 ¶¶ 12, 20).” Memorandum of Law in Support of Defendant Google LLC’s Motion to Seal, Dkt. No. 309, at 1; *see also* Defendant Google’s Motion to Seal, Dkt. No. 308.

Pursuant to the protective order, “[a]ll transcripts of depositions taken in the Action after entry of this Order will be treated as Highly Confidential Information in their entirety for 45 days after the date of the deposition, or until 5 days before trial, whichever date is earlier.” Dkt. No. 203 ¶ 7(b). The protective order further provides that, “[w]ithin 45 days following the date of the deposition, the deponent, whether a Non-Party or a Party, may designate, subject to the provisions of this Order, Highly Confidential Information or Confidential Information any portion of the deposition transcript, by page(s) and line(s), and any deposition exhibits provided by the deponent

¹ The exhibits consist of the rough and final versions of the Rule 30(b)(1) depositions of Christopher Karpenko on August 10, 2023, and Allen Owens on August 15, 2023. *See* Dkt. Nos. 301 and 303, Exs. 1, 3, and 2, 4, respectively. Effectively, then, the four exhibits amount to only two transcripts.

or the deponent's employer or its affiliates, or containing the Highly Confidential Information or Confidential Information of the deponent or the deponent's employer or its affiliates (regardless of who provided or produced the Document).” *Id.* Exhibits 1 and 3 to Google’s Motion for *In Camera* Review (Karpenko deposition) are therefore designated as Highly Confidential Information in their entirety by operation of the protective order through September 24, 2023 (45 days after August 10 deposition date). Exhibits 2 and 4 (Owens deposition) are so designated through September 29, 2023 (45 days after August 15 deposition date).

The United States recognizes that the standard for sealing under Local Rule 5 and Fourth Circuit Precedent is stringent and reflects a strong presumption in favor of public court proceedings and court filings. Accordingly, the United States is not suggesting that the designation of material by any party as confidential or highly confidential, without more, is a factor in whether material should remain under seal. Rather, due to the length of the two transcripts contained in Exhibits 1 through 4, and the need to review the transcripts carefully while making confidentiality designations and to make a narrowly tailored determination as to whether any of the contents of the transcripts should remain under seal, the United States requests that the Court defer ruling until September 24, 2023 (as to Exhibits 1 and 3) and September 29, 2023(as to Exhibits 2 and 4), as to what portion of the transcripts should remain under seal. Prior to those two dates, the United States will submit a supplemental response to Google’s motion to seal, with an attachment containing a proposed redacted transcript for inclusion on the public docket, as well as an explanation for why any remaining redactions are appropriate under the standards of Local Rule 5 and Fourth Circuit precedent.

Plaintiff therefore respectfully requests that the Court defer ruling on Google’s motion to seal the deposition transcript exhibits at issue through September 24 (Exhibits 1 and 3) and

September 29 (Exhibits 2 and 4), respectively, to allow the United States and the deponents the time allowed by the protective order for reviewing and designating Highly Confidential Information and Confidential Information contained in those depositions transcripts, and to concurrently make determinations as to whether any material should be maintained under seal. The United States respectfully requests that Exhibits 1-4 to Dkt. Nos. 301 and 303 remain provisionally under seal until the United States has made its supplemental submissions.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court defer ruling on Google's motion to seal Exhibits 1-4 to Dkt. Nos. 301 and 303, and provide Plaintiff until September 24, 2023, to provide public redacted versions of Exhibits 1 and 3, and until September 29, 2023, to provide public redacted versions of Exhibits 2 and 4.

Dated: August 25, 2023

Respectfully submitted,

JESSICA D. ABER
United States Attorney

/s/ Dennis C. Barghaan, Jr.
DENNIS C. BARGHAAN, JR.
Deputy Chief, Civil Division
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, VA 22314
Telephone: (703) 299-3891
Facsimile: (703) 299-3983
Email: dennis.barghaan@usdoj.gov

/s/ Aaron M. Teitelbaum
AARON M. TEITELBAUM
/s/ Jimmy S. McBirney
JIMMY S. MCBIRNEY

United States Department of Justice
Antitrust Division
450 Fifth Street NW
Washington, DC 20530
Telephone: (202) 894-4266
Fax: (202) 616-8544
Email: Aaron.Teitelbaum@usdoj.gov

Attorneys for the United States